

Message Text

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ACTION L-03

INFO OCT-01 ARA-06 ISO-00 SSO-00 NSCE-00 INRE-00 USIE-00

CIAE-00 DODE-00 PM-04 H-02 INR-07 NSAE-00 NSC-05

PA-01 PRS-01 SP-02 SS-15 AID-05 COME-00 EB-07 FRB-03

TRSE-00 XMB-02 OPIC-03 CIEP-01 LAB-04 SIL-01 OMB-01

INT-05 OPR-02 FEA-01 /082 W
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FM AMEMBASSY LIMA

TO SECSTATE WASHDC NIACT IMMEDIATE 1909

C O N F I D E N T I A L SECTION 1 OF 2 LIMA 08615

FOR L/ARA - FRANK WILLIS

EO 11652: GDS

TAGS: BDIS, EIND, EINV, EMIN, PFOR, PE

SUBJECT: MARCONA - REVISED DRAFT AGREEMENT

1. EXTENSIVE NEGOTIATIONS TODAY (SEPTEMBER 21) PRODUCED SOMEWHAT REVISED AND MODIFIED DRAFT AGREEMENT. ALTHOUGH IT MUST RECEIVE FINAL APPROVAL OF MINISTERS, IT APPEARS THERE WILL BE NO FURTHER SIGNIFICANT CHANGES EXCEPT IN SUBPARAGRAPH I B. WHERE THERE WAS MUCH DISCUSSION AMONG GOP GROUP AS TO HOW TO TREAT ARTICLE I B, DEPARTMENT WILL NOTE SIGNIFICANT CHANGES IN ARTICLE I A., A NEW PARAGRAPH IN ARTICLE IV AND NEW ARTICLE VI. LATER IS, IN SUBSTANCE, SIMILAR TO A PROVISION WHICH WAS PART OF DRAFT AGREEMENT APPROVED BY SECRETARY IN MARCH AND REFLECTS A LETTER WHICH MARCONA WILL GIVE USG PRIOR TO SIGNATURE OF AGREEMENT.

2. REVISED ARTICLE I A. ELIMINATES ANY REFERENCE TO
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SPECIFIC BANKS OR BANK LOANS BUT OBLIGATION TO PAY \$37 MIL-

LION REMAINS CONTINGENT ON AVAILABILITY OF FINANCING.
PROMISSOREUNOTE, WHICH USG WILL NOT, OF COURSE, SIGN, WILL
CONTINUE TO MAKE EXPLICIT LINK TO BALANCE OF PAYMENT
FINANCING BY U.S. BANKS.

3. WE ARE PROCEEDING ON ASSUMPTION THAT THIS TEXT, WITH
NO MORE THAN VERY MINOR ADDITIONAL CHANGES, WILL BE THE ONE
WE WILL SIGN TOMORROW. GANTZ AND EINAUDI WILL CAREFULLY
COMPARE THE ENGLISH AND SPANISH TEXTS TO ASSURE THAT THEY
HAVE THE SAME MEANING IN ALL SUBSTANTIVE RES-
PECTS, DRAWING, AS NECESSARY, ON THE OPR/LS LANGUAGE SERVICES'
MEMORANDUM OF MAY 28 TO L/ARA WHICH COMPARED THE TEXT OF THE EARLIER
VERSION.

4. TEXT FOLLOWS:

AGREEMENT BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF PERU

THE GOVERNMENTS OF PERU AND THE UNITED STATES OF
AMERICA, WITH THE OBJECTIVE OF ARRIVING AT A DEFINITIVE
SETTLEMENT CONCERNING JUST COMPENSATION FOR THE EXPRO-
PRIATED ASSETS OF THE MARCONA MINING COMPANY, WHOSE
MINING METALLURGICAL COMPLEX IN PERU WAS NATIONALIZED
IN ACCORDANCE WITH THE STIPULATIONS OF DECREE LAW 21228,
HAVE DECIDED TO CONCLUDE THE FOLLOWING AGREEMENT:

ARTICLE I: IN VIEW OF THE DIFFERENCES ARISING IN
THE VALUATION OF THE PROPERTIES OF THE NORTH AMERICAN
MARCONA MINING COMPANY SUBJECT TO EXPROPRIATION BY THE
GOVERNMENT OF PERU, THE GOVERNMENT OF THE UNITED STATES
OF AMERICA EXTENDED ITS GOOD OFFICES TO THE END THAT RE-
LATIONS BETWEEN THE TWO COUNTRIES SHOULD NOT BE AFFECTED
BY VARIOUS ASPECTS OF A MATTER WHICH IS GOVERNED BY THE
LAWS OF THE EXPROPRIATING COUNTRY AND WITH PRINCIPLES
OF INTERNATIONAL LAW.

WITHIN THESE PRINCIPLES AND BASED ON THE REPORTS OF
THE COMMISSIONS DESIGNATED BY THE GOVERNMENT OF PERU FOR
THE VALUATION OF THE DEBTS AND LIABILITIES AND THE DETER-
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MINATION OF DEBTS, THE GOVERNMENT OF PERU AGREES
TO PAY
TO THE MARCONA MINING COMPANY AS JUST COMPENSATION FOR ITS
EXPROPRIATED ASSETS THE SUM OF \$61,400,000 WHICH WILL BE
PAID IN THE FOLLOWING MANNER:

A. \$37 MILLION (THIRTY-SEVEN MILLION U.S. DOLLARS)
IN CASH, BY A PROMISSORY NOTE, WHICH WILL BE ACCEPTED BY
THE BANCO DE LA NACION IN ITS CAPACITY AS FINANCIAL

AGENT OF THE STATE, AND WHICH WILL BE PAID ON THE DATE ON WHICH THE NECESSARY FINANCING BECOMES AVAILABLE, UNDER THE TERMS AND CONDITIONS FIXED IN THE PROMISSORY NOTE WHICH REFLECTS THIS OBLIGATION.

B. \$22,440,000 (TWENTY-TWO MILLION FOUR HUNDRED FORTY THOUSAND U.S. DOLLARS), THE VALUE IT IS ESTIMATED MARCONA, INC. WILL OBTAIN AS COMPENSATION THROUGH THE EXCLUSIVE SALE IN THE UNITED STATES MARKET OF 3,740,000 LONG TONS OF IRON ORE IN THE FORM OF PELLETS, WHICH MINERO PERU COMERCIAL WILL SELL IT AT A PRICE OF \$18 (EIGHTEEN U.S. DOLLARS) PER TON FOR THE FIRST 1.1 MILLION TONS, \$20 (TWENTY U.S. DOLLARS) PER TONE FOR THE SUCCEEDING TWO MILLION TONS AND \$23 (TWENTY-THREE U.S. DOLLARS) PER TON FOR THE FINAL 640,000 TONS, UNDER THE TERMS AND CONDITIONS FIXED IN THE ORE SALES CONTRACT SIGNED THIS SAME DAY.

C. \$2,000,000 (TWO MILLION U.S. DOLLARS) DERIVED FROM THE FREIGHT CONTRACT CONCLUDED BETWEEN THE COMPANIA PERUANA DE VAPORES AND MARCONA CARRIERS ON DECEMBER 11, 1975, WHICH REMAINS IN FORCE UNTIL MARCH 31, 1977, UNDER COMPETITIVE CONDITIONS AND WHICH RESULTS IN THE ACCOUNTING OF \$1.00 (ONE U.S. DOLLAR) PER METRIC TON, IN THE RATES ESTABLISHED UNDER SAIBCONTRACT.

ARTICLE II: THE GOVERNMENT OF THE UNITED STATES CONFIRMS THAT WITH THE PAYMENT OF THE \$37 MILLION CASH AND THE FULFILLMENT OF THE CONTRACTUAL OBLIGATIONS THAT THE GOVERNMENT OF PERU ASSUMES FOR IMPLEMENTATION BY ITS PERTINENT PUBLIC ENTITIES, AS STIPULATED IN ARTICLE I, ALL THE RESPONSIBILITIES AND OBLIGATIONS OF THE GOVERNMENT OF PERU TOWARD THE MARCONA CORPORATION, ITS SUBSIDIARIES, BRANCHES OR AFFILIATES ARISING OUT OF THE NATIONALIZATION BY PERU OF THE PERUVIAN BRANCH OF THE

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ACTION L-03

INFO OCT-01 ARA-06 ISO-00 SSO-00 NSCE-00 INRE-00 USIE-00

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TO SECSTATE WASHDC NIACT IMMEDIATE 1910

C O N F I D E N T I A L SECTION 2 OF 2 LIMA 08615

MARCONA MINING COMPANY, INCLUDING ALL OF THE OBLIGATIONS RESULTING FROM THE OFF-LOADING OF THE CARGO OF THE STEAMSHIP ELIZABETH LYKES AT THE PORT OF CALLAO ON AUGUST 5, 1975, WHICH PASSED TO THE OWNERSHIP OF HIERRO-PERU, WILL BE SATISFIED.

ARTICLE III: IN VIEW OF THE INTERGOVERNMENTAL NATURE OF THIS AGREEMENT, THE GOVERNMENT OF PERU DECLARES THAT THERE NO LONGER EXIST ANY LIABILITIES FOR THE PAYMENT OF TAXES, OR OTHER CHARGES OR OBLIGATIONS, OR LEGAL ACTIONS, CIVIL OR OTHERWISE, AGAINST THE MARCONA CORPORATION OR ITS SUBSIDIARIES, BRANCHES OR AFFILIATES, INCLUDING THE MARCONA MINING COMPANY, OR AGAINST THE PRESENT OR FORMER OFFICIALS OF ANY OF THEM, REGARDING THEIR ACTIVITIES AS EMPLOYEES OF MARCONA CORPORATION, IT SUBSIDIARIES, BRANCHES OR AFFILIATES, PRIOR TO THE CONCLUSION OF THE AGREEMENT. NOR WILL ANY CLAIMS OR PROCEEDINGS BASED ON SUCH TAXES, CHARGES, OBLIGATIONS, OR LEGAL ACTIONS AFFECTING THE NATURAL OR JURIDICAL PERSONS REFERRED TO ABOVE BE ASSERTED, CONTINUED OR ENFORCED IN THE FUTURE.

ARTICLE IV: AFTER THE ENTRY INTO FORCE OF THIS AGREEMENT, NEITHER GOVERNMENT WILL PRESENT TO THE OTHER, ON ITS BEHALF OR ON BEHALF OF NATURAL OR JURIDICAL PERSONS
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OF ITS NATIONALITY, ANY CLAIM OR DEMAND ARISING OUT OF THE NATIONALIZATION BY THE GOVERNMENT OF PERU OF MARCONA MINING COMPANY'S MINING-METALLURGICAL COMPLEX IN PERU OR OF THE OPERATIONS OF THE MARCONA MINING COMPANY OR ITS SUCCESSOR OR SUCCESSORS. IN THE EVENT THAT SUCH CLAIMS ARE PRESENTED DIRECTLY BY NATIONS OF ONE COUNTRY TO THE GOVERNMENT OF THE OTHER, SUCH GOVERNMENT WILL REFER THEM TO THE GOVERNMENT OF THE NATIONAL CONCERNED.

THE PRECEDING PARAGRAPH OF THIS ARTICLE IS NOT APPLICABLE TO THE OBLIGATIONS REFERRED TO IN ARTICLE I OF THIS AGREEMENT.

ARTICLE V: THE GOVERNMENT OF PERU AFFIRMS THAT IN ACCORDANCE WITH ARTICLE 12 OF DECREE LAW 21228, HIERRO-PERU HAS ASSUMED, BY SUBROGATION, THE OUTSTANDING OBLIGATIONS OF THE PERUVIAN BRANCH OF THE MARCONA MINING COMPANY TO SUPPLIERS AND LENDING INSTITUTIONS, AS WELL

AS THE SALARIES AND SOCIAL BENEFITS OF ITS EMPLOYEES.

ARTICLE VI: ITS IS THE UNDERSTANDING OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA THAT THE MARCONA CORPORATION RECOGNIZES THAT THE UNDERTAKINGS OF THE GOVERNMENT OF PERU SPECIFIED IN THE PRESENT AGREEMENT, ONCE IMPLEMENTED, WILL CONSTITUTE THE FULL AND FINAL SETTLEMENT OF ITS CLAIMS RESULTING FROM THE NATIONALIZATION, AND THAT IT ACCEPTS AND PROMISES TO CARRY OUT FULLY AND IN GOOD FAITH, THE CONTRACTS WITH MINERO PERU COMERCIAL ENTERED INTO THIS SAME DATE RELATING TO THE SALE OF ORE, AND WITH COMPANIA PERUANA DE VAPORES DATED DECEMBER 11, 1975, UNTIL ITS EXPIRATION ON MARCH 31, 1977.

ARTICLE VII: THIS AGREEMENT WILL ENTER INTO FORCE UPON ITS SIGNATURE. DONE IN LIMA THE ----- OF SEPTEMBER, 1976, IN SPANISH AND ENGLISH, BOTH VERSIONS BEING EQUALLY AUTHENTIC.

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JOSE DE LA PUENTE RADBILL CARLYLE E. MAW
MINISTER FOR FOREIGN AFFAIRS SPECIAL REPRESENTATIVE
OF THE REPUBLIC OF PERU OF THE PRESIDENT OF THE
 UNITED STATES OF AMERICA
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